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SENATE BILL 148

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Don Kidd

AN ACT

RELATING TO WORKERS' COMPENSATION; INCREASING BENEFITS;
REMOVING FILING FEES; AMENDING AND REPEALING SECTIONS OF THE
WORKERS' COMPENSATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-41 NMSA 1978 (being Laws 1959,
Chapter 67, Section 20, as amended) is amended to read:

"52-1-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

A. For total disability, the worker shall receive,
during the period of that disability, sixty-six and two-thirds
percent of his average weekly wage, [~~not to exceed a maximum
compensation of ninety dollars (\$90.00) a week, effective July
1, 1975; and not to exceed a maximum compensation of sixty-six
and two-thirds percent of the average weekly wage in the
state, a week, effective January 1, 1976; and not to exceed a~~

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1 ~~maximum compensation of seventy-eight percent of the average~~
2 ~~weekly wage in the state, a week, effective July 1, 1976; and~~
3 ~~not to exceed a maximum compensation of eighty-nine percent of~~
4 ~~the average weekly wage in the state, a week, effective July~~
5 ~~1, 1977; and not to exceed a maximum compensation of one~~
6 ~~hundred percent of the average weekly wage in the state, a~~
7 ~~week, effective July 1, 1978; and not to exceed a maximum~~
8 ~~compensation of eighty-five percent of the average weekly wage~~
9 ~~in the state, a week, effective July 1, 1987.] not to exceed a~~
10 maximum compensation of one hundred percent of the average
11 weekly wage in the state, a week, effective January 1, 2000;
12 and to be not less than a minimum compensation of thirty-six
13 dollars (\$36.00) a week. Except as provided in Subsections B
14 and C of this section, the worker shall receive compensation
15 benefits for the remainder of his life.

16 B. For disability resulting from primary mental
17 impairment, the maximum period of compensation is one hundred
18 weeks. For disability resulting in secondary mental
19 impairment, the maximum period of compensation is the maximum
20 period allowable for the disability produced by the physical
21 impairment or one hundred weeks, whichever is greater.

22 C. For the purpose of paying compensation benefits
23 for death, pursuant to Section 52-1-46 NMSA 1978, the worker's
24 maximum disability recovery shall be deemed to be seven
25 hundred weeks.

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1 D. Where the worker's average weekly wage is less
2 than thirty-six dollars (\$36.00) a week, the compensation to
3 be paid the worker shall be his full weekly wage.

4 E. For the purpose of the Workers' Compensation
5 Act, the average weekly wage in the state shall be determined
6 by the employment security division of the labor department on
7 or before June 30 of each year and shall be computed from all
8 wages reported to the employment security division from
9 employing units, including reimbursable employers, in
10 accordance with the regulations of the division for the
11 preceding calendar year, divided by the total number of
12 covered employees divided by fifty-two.

13 F. The average weekly wage in the state,
14 determined as provided in Subsection E of this section, shall
15 be applicable for the full period during which compensation is
16 payable when the date of the occurrence of an accidental
17 injury falls within the calendar year commencing January 1
18 following the June 30 determination.

19 G. Unless the computation provided for in
20 Subsection E of this section results in an increase or
21 decrease of two dollars (\$2.00) or more, raised to the next
22 whole dollar, the statewide average weekly wage determination
23 shall not be changed for any calendar year. "

24 Section 2. Section 52-1-46 NMSA 1978 (being Laws 1959,
25 Chapter 67, Section 25, as amended) is amended to read:

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1 "52-1-46. COMPENSATION BENEFITS FOR DEATH. -- Subject to
2 the limitation of compensation payable under Subsection G of
3 this section, if an accidental injury sustained by a worker
4 proximately results in his death within the period of two
5 years following his accidental injury, compensation shall be
6 paid in the amount and to the persons entitled thereto as
7 follows:

8 A. if there are no eligible dependents, except as
9 provided in Subsection C of Section 52-1-10 NMSA 1978 of the
10 Workers' Compensation Act, the compensation shall be limited
11 to the funeral expenses, not to exceed [~~three thousand dollars~~
12 ~~(\$3,000)~~] seven thousand five hundred dollars (\$7,500), and
13 the expenses provided for medical and hospital services for
14 the deceased, together with all other sums which the deceased
15 should have been paid for compensation benefits up to the time
16 of his death;

17 B. if there are eligible dependents at the time of
18 the worker's death, payment shall consist of a sum not to
19 exceed [~~three thousand dollars (\$3,000)~~] seven thousand five
20 hundred dollars (\$7,500) for funeral expenses and expenses
21 provided for medical and hospital services for the deceased,
22 together with such other sums as the deceased should have been
23 paid for compensation benefits up to the time of his death and
24 compensation benefits to the eligible dependents as
25 hereinafter specified, subject to the limitations on maximum

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1 periods of recovery provided in Sections 52-1-41 through
2 52-1-43 and 52-1-47 NMSA 1978;

3 C. if there are eligible dependents entitled
4 thereto, compensation shall be paid to the dependents or to
5 the person authorized by the director or appointed by the
6 court to receive the same for the benefit of the dependents in
7 such portions and amounts, to be computed and distributed as
8 follows:

9 (1) to the child or children, if there is no
10 widow or widower entitled to compensation, sixty-six and two-
11 thirds percent of the average weekly wage of the deceased;

12 (2) to the widow or widower, if there are no
13 children, sixty-six and two-thirds percent of the average
14 weekly wage of the deceased, until remarriage; or

15 (3) to the widow or widower, if there is a
16 child or children living with the widow or widower, forty-five
17 percent of the average weekly wage of the deceased, or forty
18 percent if such child is not or all such children are not
19 living with a widow or widower and, in addition thereto,
20 compensation benefits for the child or children which shall
21 make the total benefits for the widow or widower and child or
22 children sixty-six and two-thirds percent of the average
23 weekly wage of the deceased. When there are two or more
24 children, the compensation benefits payable on account of such
25 children shall be divided among such children, share and share

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1 alike; and

2 (4) two years' compensation benefits in one
3 lump sum shall be payable to a widow or widower upon
4 remarriage; however, the total benefits shall not exceed the
5 maximum compensation benefit as provided in Subsection B of
6 this section;

7 D. if there is neither widow, widower nor
8 children, compensation may be paid to the father and mother or
9 the survivor of them, if dependent to any extent upon the
10 worker for support at the time of the worker's death, twenty-
11 five percent of the average weekly wage of the deceased, and
12 in no event shall the maximum compensation to such dependents
13 exceed the amounts contributed by the deceased worker for
14 their care; provided that if the father and mother or the
15 survivor of them was totally dependent upon such worker for
16 support at the time of the worker's death, he or they shall be
17 entitled to fifty percent of the average weekly wage of the
18 deceased;

19 E. if there is neither widow, widower nor children
20 nor dependent parent, then to the brothers and sisters and
21 grandchildren if actually dependent to any extent upon the
22 deceased worker for support at the time of the worker's death,
23 thirty-five percent of the average weekly wage of the deceased
24 worker with fifteen percent additional for brothers and
25 sisters and grandchildren in excess of two, with a maximum of

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1 sixty-six and two-thirds percent of the average weekly wage of
2 the deceased, and in no event shall the maximum compensation
3 to partial dependents exceed the respective amounts
4 contributed by the deceased worker for their care;

5 F. in the event of the death or remarriage of the
6 widow or widower entitled to compensation benefits as provided
7 in this section, the surviving children shall then be entitled
8 to compensation benefits computed and paid as provided in
9 Paragraph (1) of Subsection C of this section for the
10 remainder of the compensable period. In the event
11 compensation benefits payable to children as provided in this
12 section are terminated as provided in Subsection E of Section
13 52-1-17 NMSA 1978, a surviving widow or widower shall then be
14 entitled to compensation benefits computed and paid as
15 provided in Paragraphs (2) and (4) of Subsection C of this
16 section for the remainder of the compensable period; and

17 G. no compensation benefits payable by reason of a
18 worker's death shall exceed the maximum weekly compensation
19 benefits as provided in Sections 52-1-41 through 52-1-43 and
20 52-1-47 NMSA 1978, and no dependent or any class thereof,
21 other than a widow, widower or children, shall in any event be
22 paid total benefits in excess of seven thousand five hundred
23 dollars (\$7,500) exclusive of funeral expenses and the
24 expenses provided for medical and hospital services for the
25 deceased paid for by the employer. "

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1 Section 3. Section 52-3-14 NMSA 1978 (being Laws 1945,
2 Chapter 135, Section 14, as amended) is amended to read:

3 "52-3-14. COMPENSATION--LIMITATIONS. --

4 A. The compensation to which an employee who has
5 suffered disablement, or his dependents, shall be entitled
6 under the New Mexico Occupational Disease Disablement Law is
7 limited to the provisions of that law. No compensation shall
8 be due or payable under the New Mexico Occupational Disease
9 Disablement Law for any disablement which does not result in
10 either the temporary disablement of the employee lasting for
11 more than seven days or in his permanent disablement as herein
12 described or in death; provided, however, that if the period
13 of temporary disablement of the employee lasts for more than
14 four weeks from the date of the disablement, compensation
15 under the New Mexico Occupational Disease Disablement Law
16 shall be payable in addition to the amount hereinafter stated
17 in a like amount for the first seven days after the date of
18 disablement. But for any such disablement for which
19 compensation is payable under the New Mexico Occupational
20 Disease Disablement Law, the employer shall in all proper
21 cases, as herein provided, pay to the disabled employee or to
22 some person authorized by the director to receive the same,
23 for the use and benefit of the beneficiaries entitled thereto,
24 compensation at regular intervals of no more than sixteen days
25 apart, in accordance with the following, less proper

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1 deductions on account of default in failure to give notice of
2 such disablement as required in Section 52-3-19 NMSA 1978.

3 B. For total disablement, the employee shall
4 receive sixty-six and two-thirds percent of his average weekly
5 wage, not to exceed a maximum compensation of [~~(1) ninety~~
6 ~~dollars (\$90.00) a week, effective July 1, 1975;~~

7 ~~(2) sixty-six and two-thirds percent of the~~
8 ~~average weekly wage in the state, a week, effective January 1,~~
9 ~~1976;~~

10 ~~(3) seventy-eight percent of the average~~
11 ~~weekly wage in the state, a week, effective July 1, 1976;~~

12 ~~(4) eighty-nine percent of the average weekly~~
13 ~~wage in the state, a week, effective July 1, 1977;~~

14 ~~(5) one hundred percent of the average weekly~~
15 ~~wage in the state, a week, effective July 1, 1978; and~~

16 ~~(6)]~~ [~~eighty-five~~] one hundred percent of the
17 average weekly wage in the state, a week, effective [~~July 1,~~
18 ~~1987~~] January 1, 2000, or to be less than a minimum
19 compensation of thirty-six dollars (\$36.00) a week, during the
20 period of such disablement, but in no event to exceed a period
21 of seven hundred weeks; provided, however, that where his
22 wages are less than thirty-six dollars (\$36.00) a week, then
23 the compensation to be paid such employee shall be the full
24 amount of such weekly wages; provided further that the
25 benefits paid or payable during a employee's entire period of

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1 disablement shall be based on and limited to the benefits in
2 effect on the date of the occurrence of the disablement.

3 C. For partial disablement, the benefits shall be
4 a percentage of the benefits payable for total disablement
5 calculated under Subsection B of this section as that
6 percentage is determined pursuant to the provisions of Section
7 52-3-4 NMSA 1978. In no event shall the duration of benefits
8 extend longer than five hundred weeks.

9 D. For the purpose of the New Mexico Occupational
10 Disease Disablement Law, the average weekly wage in the state
11 shall be determined by the employment security division of the
12 labor department on or before June 30 of each year and shall
13 be computed from all wages reported to the employment security
14 division from employing units, including reimbursable
15 employers, in accordance with the regulations of the
16 employment security division for the preceding calendar year,
17 divided by the total number of covered employees divided by
18 fifty-two. The first such determination by the employment
19 security division of the average weekly wage in the state
20 shall be made on or before June 30, 1975 from reported wages
21 and covered employees for the calendar year ending December
22 31, 1974.

23 E. The average weekly wage in the state,
24 determined as provided in Subsection D of this section, shall
25 be applicable for the full period during which compensation is

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1 payable when the date of the occurrence of the disablement
2 falls within the calendar year commencing January 1 following
3 the June 30 determination.

4 F. Unless the computation provided for in
5 Subsection D of this section results in an increase or
6 decrease of two dollars (\$2.00) or more, raised to the next
7 whole dollar, the statewide average weekly wage determination
8 shall not be changed for any calendar year.

9 G. In case death proximately results from the
10 disablement within the period of two years, compensation
11 benefits to be paid such employee shall be in the amounts and
12 to the persons as follows:

13 (1) if there are no dependents, the
14 compensation shall be limited to the funeral expenses not to
15 exceed [~~three thousand dollars (\$3,000)~~] seven thousand five
16 hundred dollars (\$7,500) and the expenses provided for medical
17 and hospital services for the deceased, together with such
18 other sums as the deceased may have been paid for disablement;
19 or

20 (2) if there are dependents at the time of
21 death, the payment shall consist of a sum not to exceed [~~three~~
22 ~~thousand dollars (\$3,000)~~] seven thousand five hundred dollars
23 (\$7,500) for funeral expenses and expenses provided for
24 medical and hospital services for the deceased, together with
25 such other sums as the deceased may have been paid for

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1 disability, and a percentage [~~hereinafter~~] specified in this
2 paragraph for average weekly wages subject to the limitations
3 of the New Mexico Occupational Disease Disablement Law to
4 continue for the period of seven hundred weeks from the date
5 of death of such employee; provided that the total death
6 compensation, unless otherwise specified, payable in any of
7 the cases [~~hereinafter~~] mentioned in this section shall not be
8 less than the minimum weekly compensation provided in
9 Subsection B of this section or more than the maximum weekly
10 compensation provided in Subsection B of this section and
11 shall be based on and limited to the benefits in effect on the
12 date of the occurrence of the disablement. If there are
13 dependents entitled thereto, compensation shall be paid to the
14 dependents or to the person authorized by the director or the
15 court to receive the same for the benefit of the dependents in
16 such portions and amounts as the director or the court,
17 bearing in mind the necessities of the case and the best
18 interests of the dependents and of the public, may determine,
19 to be computed on the following basis and distributed to the
20 following persons:

21 (a) to the child or children, if there
22 is no widow or widower entitled to compensation, sixty-six and
23 two-thirds percent of the average weekly wage of the deceased;

24 (b) to the widow or widower, if there
25 are no children, sixty-six and two-thirds percent of the

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1 average weekly wage of the deceased, until remarriage;

2 (c) to the widow or widower, if there
3 is a child or children living with the widow or widower,
4 forty-five percent of the average weekly wage of the deceased,
5 or forty percent, if such child is not or all such children
6 are not living with a widow or widower, and in addition
7 thereto, compensation benefits for the child or children which
8 shall make the total benefits for the widow or widower and
9 child or children sixty-six and two-thirds percent of the
10 average weekly wage of the deceased. When there are two or
11 more children, the compensation benefits payable on account of
12 such children shall be divided among such children, share and
13 share alike;

14 (d) two years' compensation benefits in
15 one lump sum shall be payable to a widow or widower upon
16 remarriage; however, the total benefits shall not exceed the
17 maximum compensation benefits as provided in Paragraph (2) of
18 this subsection;

19 (e) if there is neither widow, widower
20 nor children, then to the father and mother or the survivor of
21 them if dependent to any extent upon the employee for support
22 at the time of his death, twenty-five percent of the average
23 weekly wage of the deceased; provided that if such father and
24 mother or the survivor of them was totally dependent upon such
25 employee for support at the time of his death, he or they

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1 shall be entitled to fifty percent of the average weekly wage
2 of the deceased, subject to the maximum weekly compensation
3 provided for in Subsection B of this section;

4 (f) no disablement benefits payable by
5 reason of an employee's death shall exceed the maximum weekly
6 compensation provided for in Subsection B of this section, and
7 no dependent or any class thereof other than a widow or
8 widower or children shall in any event be paid total benefits
9 in excess of seven thousand five hundred dollars (\$7,500)
10 exclusive of funeral expenses and the expenses provided for
11 medical and hospital services for the deceased paid for by the
12 employer.

13 If there is neither widow, widower nor children nor
14 dependent parent, then to the brothers and sisters, if
15 actually dependent to any extent upon the deceased for support
16 at the time of his death, thirty-five percent of the average
17 weekly wage of the deceased, with fifteen percent additional
18 for brothers or sisters in excess of two, with a maximum of
19 sixty-six and two-thirds percent to be paid to their guardian;
20 provided that the maximum compensation to partial dependents
21 shall not exceed the respective amounts therefor contributed
22 by the deceased employee or the maximum weekly compensation
23 provided for in Subsection B of this section; and

24 (g) in the event of the death or
25 remarriage of the widow or widower entitled to compensation

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1 under this subsection, the surviving children shall then be
2 entitled to compensation computed and paid as in Subparagraph
3 (a) of this paragraph for the remainder of the compensable
4 period, and in the event compensation benefits payable to
5 children as provided in this section are terminated as
6 provided in Paragraph (5) of Subsection A of Section 52-3-13
7 NMSA 1978, a surviving widow or widower shall then be entitled
8 to compensation benefits computed and paid as provided in
9 Subparagraphs (b) and (d) of this paragraph for the remainder
10 of the compensable period. "

11 Section 4. REPEAL. -- Sections 52-1-4.1 and 52-3-9.1 NMSA
12 1978 (being Laws 1979, Chapter 368, Section 2 and Laws 1980,
13 Chapter 88, Section 4, as amended) are repealed.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
5 February 2, 1999

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8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 148

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 PUBLIC AFFAIRS COMMITTEE.

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19 Respectfully submitted,

Roman M. Maes, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Macias, Robinson

Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
5 February 10, 1999

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8 Mr. President:

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10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

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13 SENATE BILL 148

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

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18 Respectfully submitted,

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25 Shannon Robinson, Chairman

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1 Adopted _____ Not

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3 (Chief Clerk)

(Chief Clerk)

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6 Date _____

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9 The roll call vote was 7 For 0 Against

10 Yes: 7

11 No: 0

12 Excused: Feldman, Smith

13 Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 10, 1999

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8 Mr. President:

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10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

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13 SENATE BILL 134

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

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19 Respectfully submitted,

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25 Shannon Robinson, Chairman

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1 Adopted _____ Not

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3 (Chief Clerk)

(Chief Clerk)

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7 Date _____

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10 The roll call vote was 5 For 1 Against

11 Yes: 5

12 No: Boitano

13 Excused: Feldman, Garcia, Smith

14 Absent: None

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17 S0134PA1

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